

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BENJAMIN McCOY,

Petitioner,

v.

CASE NO. 05-CV-71309-DT
HONORABLE GEORGE CARAM STEEH

KURT JONES,

Respondent.

**ORDER DENYING THE MOTIONS FOR A CERTIFICATE OF APPEALABILITY
AND FOR LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL**

Petitioner Benjamin McCoy has appealed the Court's opinion and order dated July 19, 2007. The opinion and order dismissed most of Petitioner's claims, but granted an evidentiary hearing on three subclaims alleging ineffective assistance of counsel.

Unless a district or circuit judge issues a certificate of appealability, an appeal may not be taken from the *final order* in a habeas corpus proceeding. 28 U.S.C. § 2253(c)(1)(A) (emphasis added). The Court has not entered a final ruling in this case, nor terminated all the proceedings. Thus, there is no "final order" from which to appeal. *See Jones v. Braxton*, 392 F.3d 683, 685-86 (4th Cir. 2004) (concluding that the district court's dismissal of a successive habeas petition without prejudice for lack of jurisdiction terminated all the proceedings and was a "final order" within the meaning of § 2253(c)(1)(A)). Accordingly, the motions for a certificate of appealability [Dkt. 38, Aug. 1, 2007] and for leave to proceed *in forma pauperis* on appeal [Dkt. 40, Aug. 1, 2007] are DENIED as premature.

Dated: August 15, 2007

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on
August 15, 2007, by electronic and/or ordinary mail.

S/Marcia Beauchemin
Deputy Clerk